

IC 32-17-4

Chapter 4. Partition Proceedings

IC 32-17-4-1

Compelling partition; defendants

Sec. 1. (a) The following persons may compel partition of land held in joint tenancy or tenancy in common as provided under this chapter:

(1) A person that holds an interest in the land as a joint tenant or tenant-in-common either:

(A) in the person's own right; or

(B) as executor or trustee.

(2) If the sale of the estate of a decedent who held an interest in the land as a joint tenant or tenant in common is necessary, the decedent's administrator or executor.

(b) A trustee, an administrator, or an executor may be made a defendant in an action for the partition of real estate to answer as to any interest the trustee, administrator, or executor has in the real estate.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-2

Petition to partition; description of premises

Sec. 2. (a) A person described in section 1(a) of this chapter may file a petition to compel partition in the circuit court or court having probate jurisdiction of the county in which the land or any part of the land is located.

(b) A petition filed under subsection (a) must contain the following:

(1) A description of the premises.

(2) The rights and titles in the land of the parties interested.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-3

Proceedings, practice, and pleadings

Sec. 3. The proceedings, practice, and pleadings for an action under this chapter are the same as in civil suits, except as otherwise provided in this chapter.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-4

Interlocutory judgments; sale of land

Sec. 4. (a) If:

(1) upon trial of any issue;

(2) upon default; or

(3) by consent of parties;

the court determines that partition should be made, the court shall award an interlocutory judgment that partition be made to parties who desire partition.

(b) In issuing a judgment under subsection (a), the court shall:

- (1) specify the share assigned to each party; and
- (2) take into consideration advancements to heirs of a person dying intestate.

(c) If the court issues a judgment under subsection (a), any part of the premises remaining after the partition belongs to the persons entitled to the premises, subject to a future partition.

(d) If:

- (1) upon trial of any issue;
- (2) upon default; or
- (3) by confession or consent of parties;

the court determines that the land for which partition is demanded cannot be divided without damage to the owners, the court may order the whole or any part of the premises to be sold as provided under section 12 of this chapter.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-5

Will expressing intent of testator

Sec. 5. Notwithstanding section 4 of this chapter, a court may not order or affirm partition of any real estate contrary to the intention of a testator expressed in the testator's will.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-6

Freeholders appointed to make partition

Sec. 6. Upon judgment of partition, the court shall appoint three (3) individuals as commissioners who:

- (1) are disinterested resident freeholders;
- (2) reside and own land in the county in which court is held; and
- (3) are not related to any of the parties;

who shall make partition of the land in accordance with the judgment of the court.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-7

Commissioners; oath

Sec. 7. (a) Before discharging their duties, the commissioners appointed under section 6 of this chapter shall take an oath to faithfully perform the duties of their trust.

(b) The oath described in subsection (a) must:

- (1) if taken in open court, be entered in the court's order book; and
- (2) if not taken in open court, be endorsed on the warrant issued to the commissioners to make the partition.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-8

Joint shares

Sec. 8. Two (2) or more persons may, if they choose, have their

shares set off together.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-9

Commissioners report required

Sec. 9. (a) The commissioners shall report to the court regarding their activities under this chapter.

(b) The commissioners shall make the report required under this section:

- (1) in open court; or
- (2) by signing and swearing to the report before a person authorized to administer oaths.

(c) A report filed under this section must specify the shares assigned to each party by:

- (1) divisions;
- (2) lots;
- (3) metes and bounds; or
- (4) plats.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-10

Report of commissioners; judgment of partition; recording

Sec. 10. If the court confirms a report filed under section 9 of this chapter, the court shall:

- (1) spread the report on the order book;
- (2) enter a judgment of partition in accordance with the report; and
- (3) record the report and judgment in a separate book kept for that purpose.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-11

Setting aside report to partition

Sec. 11. (a) Before confirming a report filed under section 9 of this chapter, the court may, if the court determines that good cause exists, set aside the report.

(b) If the court sets aside a report under subsection (a):

- (1) the court may:
 - (A) recommit the duty of partition to the same commissioners; or
 - (B) appoint other commissioners in the same manner as the original commissioners; and
- (2) the commissioners shall perform the duties described in this chapter.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-12

Sale of land; division not possible without damage to owners

Sec. 12. (a) If the commissioners report to the court that the whole or part of the land of which partition is demanded can not be divided

without damage to the owners, the court may order the whole or any part of the land to be sold at public or private sale on terms and conditions prescribed by the court.

(b) If the court orders a sale under this section, the order shall provide for reasonable public notice of the sale.

(c) If the court orders a sale under this section but does not order the sale to be made for cash, the court shall require that the purchaser make a cash payment of at least one-third ($1/3$) of the purchase price to the commissioner appointed under section 14 of this chapter at the time of the sale.

(d) Land sold under this section may not be sold for less than:

- (1) if sold at public sale, two-thirds ($2/3$) of its appraised value; and
- (2) if sold at private sale, its appraised value.

The court shall determine the appraised value of the land in the same manner as in cases of sales of land on execution.

(e) If only a part of land is sold under this section, the remainder may be partitioned as provided under this chapter.

(f) If the value of land ordered by the court to be sold at private sale does not exceed one thousand dollars (\$1,000), the land may, in the discretion of the court, be sold without any notice of sale being had or given.

(g) In all cases, the purchaser of land sold under this section has rights in all crops planted on the land after the sale.

(h) The court may:

- (1) approve reports of sale by commissioners in partition proceedings; and
- (2) order the deed delivered to the purchaser.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-13

Partial partition; assignment of shares

Sec. 13. If the court confirms partial partition:

- (1) the shares assigned are full shares; and
- (2) the residue reserved for sale is discharged from all title or claim of the parties receiving assignment of their shares under the partition.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-14

Commissioners to sell land; bond

Sec. 14. (a) If the court orders a sale under section 12 of this chapter, the court shall appoint a commissioner, other than a commissioner appointed to make partition, to conduct the sale.

(b) A commissioner appointed under this section shall file a bond payable to the state of Indiana in an amount determined by the court, conditioned for the faithful discharge of the duties of the commissioner's trust.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-15

Deeds and conveyances; mortgages securing deferred payments

Sec. 15. (a) If the court determines that:

(1) land is sold under section 12 of this chapter for cash; or
(2) land is sold under section 12 of this chapter for partial credit
and that the first or cash payment of the purchase price is paid;
the court shall order the commissioner appointed under section 14 of
this chapter, or some other person, to execute a conveyance to the
purchaser.

(b) A conveyance made under this section bars all claims of the
prior owners of the land as if the prior owners had executed the
conveyance.

(c) If partial credit is given for land sold under section 12 of this
chapter, the court shall, at the time the court orders the conveyance
to be made under this section, also order and direct that, concurrently
with the execution of the conveyance, the purchaser shall execute to
the commissioner a mortgage upon the land to secure the deferred
payments of the purchase price of the land.

(d) The commissioner shall place a mortgage executed under this
section upon record as required by law.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-16

Purchase of land by commissioners

Sec. 16. Commissioners appointed to make partition, or to sell,
may not purchase the land partitioned or sold by the commissioners.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-17

Proceeds from sale of land

Sec. 17. The commissioner shall pay the proceeds of a sale under
this chapter after payment of just costs and expenses to the persons
entitled to the proceeds according to their respective shares, under
the direction of the court.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-18

Commissioners to make partition; number performing duties; vacancies

Sec. 18. (a) Any two (2) of the persons named as commissioners
to make partition may perform the duties required by this chapter.

(b) The court may fill a vacancy of a commissioner.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-19

Commissioners; vacancy; effect

Sec. 19. (a) The occurrence of a vacancy does not invalidate the
previous acts of the commissioners.

(b) A successor commissioner shall take up and continue the
proceedings, which are as valid as if the proceedings had been done

by the commissioners first appointed.
As added by P.L.2-2002, SEC.2.

IC 32-17-4-20

Commissioners; allowances

Sec. 20. The court shall provide an allowance, in an amount that the court determines to be reasonable:

- (1) to the commissioners for their services; and
- (2) for surveying, marking, chaining, platting, and executing the necessary conveyances.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-21

Costs; expenses; counsel fees

Sec. 21. (a) All costs and necessary expenses, including reasonable attorney's fees for plaintiff's attorney, in an amount determined by the court, shall be awarded and enforced in favor of the parties entitled to the costs and expenses against the partitioners.

(b) The court shall assign costs and expenses awarded under subsection (a) against each partitioner as the court may determine in equity, taking into consideration each partitioner's relative interest in the land or proceeds apportioned.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-22

Opening and reviewing closed proceedings

Sec. 22. Upon showing sufficient cause, a party to proceedings under this chapter who was not served with summons may, not more than one (1) year after a partition is confirmed, appear and open the proceedings, and obtain a review of the partition.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-23

Partition of fee and life estates

Sec. 23. A:

- (1) person that owns:
 - (A) an undivided interest in fee simple in any lands; and
 - (B) a life estate in:
 - (i) the remaining part of the land; or
 - (ii) any part of the remaining portion of the land; or
- (2) person that owns a fee in the land described in subdivision (1) that is subject to the undivided interest in fee and the life estate in the land;

may compel partition of the land and have the fee simple interest in the land set off and determined in the same manner as land is partitioned under Indiana law.

As added by P.L.2-2002, SEC.2.

IC 32-17-4-24

Lots or out-lots; streets and alleys

Sec. 24. (a) In a proceeding for the partition of real estate:

(1) in a state court; and

(2) in which a person less than eighteen (18) years of age is a party in interest;

the commissioners appointed to make the partition may lay off into lots or out-lots, streets, and alleys, any land included in the partition and may make a plat of the lots or out-lots, streets, and alleys and submit the plat to the court for approval or rejection.

(b) If a plat submitted under subsection (a) is approved by the court:

(1) the commissioners appointed to make the partition shall acknowledge the plat in open court;

(2) the plat must be recorded as other similar plats of like nature are recorded; and

(3) the plat is legally valid as if the plat were made by a legal proprietor of the lands who is at least eighteen (18) years of age.

(c) The court shall determine, upon the return by the commissioners of a plat described in subsection (b), whether it is in the interest of the parties for the land that is the subject of the partition proceeding to be laid off into lots or out-lots, streets, and alleys. If the court determines that it is in the interest of the parties, the appointed commissioners may partition the land as in other cases without detriment to the interested parties. If partition of the land is not practicable without detriment to the interested parties, the lots or out-lots may be sold by order of the court.

As added by P.L.2-2002, SEC.2.